

July 24, 2007



**TRANSCRIPT**  
**July 24, 2007**

**MONTGOMERY COUNTY COUNCIL**

Councilmember Marilyn Praisner, President  
Councilmember Phil Andrews  
Councilmember Valerie Ervin  
Councilmember George Leventhal

Councilmember Michael Knapp, Vice-President  
Councilmember Marc Elrich  
Councilmember Nancy Floreen  
Councilmember Duchy Trachtenberg



July 24, 2007

1 Council President Praisner,  
2 Good morning ladies and gentlemen. Welcome to the Tuesday July 24th meeting of the  
3 Montgomery County Council. If we could please rise for a moment of silence. Thank  
4 you. General Business, Agenda and Calendar changes Madam Clerk.

5  
6 Linda Lauer,  
7 There are two additional items on the Consent Calendar today for introduction. The first  
8 is a resolution to request the Department of Health and Human Services to issue a  
9 request for expression of interest for a benchmark study of Montgomery County's five  
10 hospitals with a focus on certificate of need projects and that resolution is sponsored by  
11 the HHS Committee. We also have introduction of a special appropriation to the County  
12 Government's operating budget for the Office of the County Executive \$200,000 to  
13 implement the provisions of the Road Code. That will go to Public Hearing in, uh, next  
14 week. Thank you.

15  
16 Council President Praisner,  
17 Okay. Thank you very much. Are there any petitions?

18  
19 Linda Lauer,  
20 No petitions.

21  
22 Council President Praisner,  
23 No petitions. Are there any minutes Madam Clerk?

24  
25 Council Clerk,  
26 No minutes.

27  
28 Council President Praisner,  
29 Okay. We have the Consent Calendar, is there a motion?

30  
31 Councilmember Knapp,  
32 Move approval.

33  
34 Council President Praisner,  
35 Council Vice-President Knapp moves approval. Councilmember Floreen seconds the  
36 motion. Remind Councilmembers that we're talking about A through H, the two items  
37 that had been added which should have been delivered to your offices at some point  
38 yesterday, the special appropriation request I believe came over my transom yesterday  
39 as well. So, are there any items that Councilmembers want to either pull or speak to?  
40 Councilmember Floreen.

41  
42 Councilmember Floreen,  
43 Thank you Madam President. First of all I wanted to thank the County Executive for  
44 getting right on, this is with respect to item H, for getting right on the initiative to work to



July 24, 2007

1 reach consensus on the design standards for the Road Code. I think it's important. We  
2 knew it wasn't going to be easy and so I'm very pleased that they have moved forward  
3 in making this question for some additional funds to support that initiative. So, way to go  
4 like. The other thing, Item B, I just had a question and I wanted to know in the fiscal '08  
5 schedule of revenue estimates and appropriations and this is not unlike the question I  
6 had the other day on some of the Growth Policy issues, if someone could get back to  
7 me with what the scheduled revenue assumes with respect to income from new building  
8 permits and assumptions with respect to new construction, that contribution to the  
9 revenue stream, there must be some assumption in there as to what we expect to be  
10 coming in and I'd like to see what that would be. Thank you.

11  
12 Council President Praisner,

13 Okay. Any other items? Council Vice-President Knapp?

14  
15 Councilmember Knapp,

16 Thank you Madam President. As it relates to item A, the OLO FY08 work program, as it  
17 relates to specifically a project on the achievement gap which was one that I proposed, I  
18 understand looking at the packet that there were some concerns that were raised, I  
19 believe by you Madam President at the MFP Committee. And so what I have done, I  
20 believe it was last week on the 16th, and tried to recognize those concerns, have a  
21 memo identifying that this study would make explicit that the purpose of the project is  
22 final information for the Council on the achievement gap in order to enhance the  
23 Education Committee's and full Council's review of MCPS budget requests, clarify that  
24 the literature search request is for a summary of practices being employed across the  
25 country to address the achievement gap but reiterate in asking for this project that there  
26 is no intent for the Education Committee or Council to begin advising the Board of  
27 Education or to recommend the adoption of specific practices for closing the  
28 achievement gap but to have a better understanding of those as we look at various  
29 proposals that come forward. And so I'd circulated that to all of my colleagues and at  
30 this point I would just add to substitute the revised text of that project in with what has  
31 been included in the OLO work program.

32  
33 Council President Praisner,

34 Okay. The Office of Legislative Oversight work program reflects this request and it will  
35 be modified with that language. Councilmember Trachtenberg.

36  
37 Councilmember Trachtenberg,

38 I actually wanted to pull for just some brief remarks item number G which is a resolution  
39 to request the Department of Health and Human Services REOI I believe that we all  
40 received a packet item last night and I basically wanted to clarify my position on this.  
41 The packet states that I was a dissenting vote in support of advancing the REOI and I  
42 did not support that recommendation. I did make an alternative suggestion but for the  
43 record I want to state that I understand the need to evaluate the existing data that are  
44 available from the state and I understand the need to have an assessment of health



July 24, 2007

1 needs here in the community as well as services that are provided by all five of our  
2 hospitals. However I think some of what's included in the packet including questions that  
3 have been submitted by Adventist Healthcare are not appropriate and I am particularly  
4 concerned about investing public dollars in what I would consider to be a market survey  
5 exercise. In particular there's language in the packet that speaks to the issue of market  
6 penetration by individual County hospitals and I believe that the concern of the County  
7 should be with access to services for the underinsured and uninsured which is a very  
8 different analysis from market penetration. And in particular I don't believe either that we  
9 had a lengthy conversation around the advance of a Community Health Improvement  
10 Plan although it was raised briefly during the worksession. It is my understanding that  
11 the Department as well as the Executive do not support advancing that at this time. And  
12 again I think the public health question here is the availability of services and while the  
13 federal government may be willing to invest significant dollars into reports of  
14 questionable value I submit to my colleagues that this County cannot afford that luxury.

15  
16 Council President Praisner,  
17 Thank you. Councilmember Floreen.

18  
19 Councilmember Floreen,  
20 Thank you Madam President. Mr. Knapp's comments reminded me of something I  
21 meant to say with respect to the OLO work program. I was provided with a briefing the  
22 other day by, I think the Department of Environmental staff with respect to a number of  
23 very serious concerns they have with respect to our septic systems throughout the  
24 County and I had contemplated and actually done up a draft of an OLO work program  
25 item to follow up on their concerns. Based on what's before us today I'm not going to  
26 add it at this point but the T&E Committee will be taking this up early on and you may  
27 see another element of work program before the full Council. There are some real  
28 serious issues as to what the County is doing in terms of encouraging proper  
29 maintenance of those systems which have some significant environmental implications  
30 as well as the fact that the Committee is seeing routinely now, communities within the  
31 sewer envelope who have failing systems and really no way to successfully extend  
32 water and sewer to them. So I just wanted to give you all a heads up. We will be getting  
33 back to that this fall and I would expect that the Committee will make some  
34 recommendations for the research.

35  
36 Council President Praisner,  
37 Thank you. Councilmember Elrich.

38  
39 Councilmember Elrich,  
40 I made a comment before on Item G, the study question. I'm a little perplexed by what it  
41 is we're trying to do here. I agree to a certain extent with Duchy's comments that, to me,  
42 a lot of the questions are incredibly subjective and you're not going to get a, what's the  
43 word for it, factual is the wrong word, but something along the lines of a substantially  
44 factual answer to the questions about how do investments effect the financial viability of



July 24, 2007

1 local hospitals. Those are decisions that are made, whether or not hospitals make  
2 investments or expand services, are things that are looked at by the State Hospital  
3 Commission and they make those decisions in determining what services they are  
4 going to allow the hospitals to provide and what expansions they're going to allow and I  
5 wonder, are we setting ourselves up in a position to basically be second-guessing the  
6 State Hospital Commission on a wide variety of issues related to the financial viability of  
7 hospitals? What would we do if we concluded something and then we went to, and the  
8 state reaches a different decision and says we believe that the hospitals are viable, that  
9 they're adequately supported by, you know, the revenue or that, you know, the state  
10 has ways of dealing with it. I mean, I see us setting ourselves up for something that we  
11 are not capable of judging or at the end of the day even affecting in terms of what the  
12 Commission allows, what the Commission doesn't allow. I'm more concerned, which I  
13 thought it was the genesis of all this, which is what is the service impact on a decision to  
14 move? I mean, we have talked about or alluded to three different CONs, certificate of  
15 needs. Two of them involve expansions or changes to existing hospital sites. One of  
16 them involves a serious move of a hospital to a more remote location from its current  
17 location. The expansion of services conjures up a different set of problems in the actual  
18 move of a hospital say five miles from their existing service area and has very, very  
19 different implications for the community. And what I thought we were going to try to do  
20 was figure out what are the service implications if Adventist moves? What is their  
21 patient load? What's it look like? Where does it come from? And what do we think, you  
22 know, where are residents in that part of the County going to go to get services which is  
23 also something that the Hospital Commission will look at. But I think this is at least due  
24 diligence on our part in making sure that the residents have adequate access to  
25 healthcare. And all of this may be irrelevant depending on what happens with Prince  
26 George's Hospital in terms of any assessment of Adventist move has to be filtered in by  
27 what happens over in Prince George's County. So I'm just concerned that we're biting  
28 off a huge piece over which we can't do very much and the one question we want to get  
29 at is kind of being buried in the middle of all this and that I think is, you know, is really  
30 the focus around Adventist. Even the questions that come over from Health and Human  
31 Services, and I think we, we are the County Government, we have struggled, as George  
32 knows, to fund Montgomery Cares at an adequate level. We've struggled even to  
33 provide the space for Montgomery Cares to do some of the things that they need to do.  
34 And the larger questions in this study I think are well beyond the scope of what the  
35 County is going to be able to do anything about. I'm sort of leery about doing studies  
36 that suggest courses of action that the County can't even imagine getting into.  
37 Somebody said to me the other day, raised the issue of a need for a hospital in the Up  
38 County and I think we'd all agree there is probably a need for a hospital in the Up  
39 County. We have zero ability to mandate the construction of a hospital in the Up County  
40 and I don't know how we change our ability to affect things of that magnitude. I know  
41 what I would like to look at and I know what I think needs to be studied, I'm not  
42 comfortable with the scope of what's proposed here and I really don't want to be in a  
43 position of second-guessing the Hospital Review Commission on financial matters.  
44



July 24, 2007

1 Council President Praisner,  
2 Councilmember Leventhal.

3  
4 Councilmember Leventhal,

5 Well, first of all, I want to thank the Council President for agreeing to add Item G to the  
6 Consent Calendar today and I had not originally expected to speak to it since it's only  
7 before us today for introduction. And it would appear given the questions and comments  
8 from my friends and colleagues that it may not be a Consent Calendar item next  
9 Tuesday and that we may want to have the Department of Health and Human Services  
10 here to explain the thinking that went into writing this resolution. But let me try and  
11 answer some of the points that have been raised by my colleagues and friends. First of  
12 all to Mr. Elrich, I want the same answers to the same questions that you've articulated  
13 and I'm optimistic that through this process we'll be able to understand better the  
14 implications specifically of Washington Adventist changing its location. What the, I have  
15 met with the County Executive on this, I've met with the Director of Health and Human  
16 Services on this, we had a Committee meeting last week and discussed this in detail.  
17 What the Executive Branch wants to do is to assemble an inventory of potential  
18 vendors, not only for the single study that would address Washington Adventist Hospital  
19 but also for other likely planning exercises that are coming down the pike in the next few  
20 years. And so what they asked me was, was I amenable to crafting the request for  
21 expression of interest in such a way that it surveyed the universe of health statistical  
22 analysts and planners, whether in the private sector, at universities or wherever, who  
23 can do this work. I must respectfully disagree with my friend and colleague  
24 Councilmember Trachtenberg, the Leggett administration does want to do a Community  
25 Health Improvement Program and they hope that in the course of identifying those  
26 vendors who are in this business, who are able to assemble this kind of data that this  
27 request for expression of interest, rather than sending out four or five or six requests for  
28 expression of interests, that they could do one to find out who is out there to do this  
29 work. And then once they've begun to identify those types of vendors, the first exercise,  
30 as it states here in the resolution, for example, if Washington Adventist is the first  
31 hospital to submit a project, it would be the first project to be analyzed. So, that would  
32 be a first effort if chronologically that's what occurs. We don't know, we heard from  
33 Washington Adventist that it doesn't yet know when it will be applying for its certificate of  
34 need. It could be as early as spring of calendar '08 but it might be later than that and  
35 they have several processes that they have to go through including the Board of  
36 Appeals, including the Planning Board with respect to the land that they've purchased.  
37 So, if they're first then presumably we would study them first if the Council then went  
38 ahead and appropriated the money which is a second step. So, there is a lot of ifs here  
39 and different policymakers have different views on this. The County Executive has a  
40 view. Members of the County Council have different views. And so, the way this is  
41 crafted, and let me just also say, I know a lot of questions were raised about, on page 3  
42 the questions from Washington Adventist Hospital, let's be fair to our staff who really is  
43 brand new at this, I mean, Ms. Obrig has simply listed for our benefit questions that  
44 were asked by the hospital. The fact that these questions occur in the memo does not



July 24, 2007

1 necessarily mean that the Request for Expression Of Interest is going to include every  
2 single one of these questions. Our staff is trying to provide background to us and there's  
3 a lot of information out there in the mix. So, all we're doing today is introducing this.  
4 There will be an opportunity presumably next Tuesday if the Council President concurs  
5 to address Councilmembers' specific concerns. We won't have likely before us next  
6 Tuesday the actual language of the Request for Expression Of Interest, that would  
7 come later but Councilmembers would have the opportunity, I would assume, Dr.  
8 Tillman, shake or nod your head, to review that as well and offer, if that is the actual  
9 language of the Request for Expression Of Interest once it is actually drafted,  
10 Councilmembers would have the opportunity to provide feedback on that. But I think  
11 part of Mr. Elrich's confusion is that it is true that the scope of this Request for  
12 Expression Of Interest is broader than just the Washington Adventist Hospital move,  
13 that's correct. That's what Uma Ahuwalia said to me, look, if we're going do this, let's  
14 just do it once. Let's identify the vendors who are out there and then we will know and  
15 there's multiple studies that we may end up doing in the next few years of which  
16 Washington Adventist, if it applies first, if the timeframe is such that it has to be done  
17 first, then that would be done first and that would be a discrete exercise which Mr.  
18 Elrich, my goal would be would address exactly the questions that you've raised which I  
19 am also very cognizant of. And just to go back over recent history on this, in this body,  
20 during the budget process a motion was made and it never was acted upon to  
21 appropriate a specific amount of money specifically to study the Washington Adventist  
22 Hospital move. My sense on that was, and I've talked with David Dise, our Procurement  
23 Director on this, that that order of decision making probably didn't make the most sense  
24 because if you announce that you have a certain amount of money available, the  
25 responses you're going to get to your request are going to come in at exactly that dollar  
26 amount. Whereas what I've been advised by my, by our colleagues in the Executive  
27 Branch is, if you start with this Request for Expression Of Interest then once you identify  
28 who's out there who might be able to do the work it gives you information that will be  
29 useful to you in crafting the RFP. The RFP can't be issued unless there is money  
30 appropriated for this purpose. And so since we don't know who is out there yet to do this  
31 work, we don't yet know how much it will cost, I thought the order of saying let's  
32 appropriate X dollars now was probably not that wise because we would then buy a  
33 study for X dollars but it might not be the study we wanted. It might be more or less than  
34 we thought. So, this, so again, I've been working closely with the County Executive, the  
35 Director of Health and Human Services, the Director of Procurement to get us to this  
36 point. I hope that at least a majority of my colleagues when we actually vote on this will  
37 go along with it. As far as Councilmember Trachtenberg's, general opposition to you  
38 know, the direction we're headed, I appreciate that we may just have a difference in  
39 point of view. My strong sense from listening to what we learned about the certificate of  
40 need process, and I said it then and I'll say it now is, we in Montgomery County are not  
41 where we need to be. We're not in a position to provide educated analytical feedback to  
42 the Maryland Hospital Commission even though the legal process for granting a  
43 certificate of need clearly anticipates that a County Health Department will be in such a  
44 position. We're not there today. For the largest County in the state, the most



July 24, 2007

1 sophisticated County in the state, one of the most sophisticated counties in the United  
2 States we should be in a much better place in terms of understanding the impact of  
3 these dramatic changes in hospital economics, hospital location, hospital service areas,  
4 access to healthcare than we are. And so I think we need to purchase outside help, and  
5 this as best I can understand it, seems to me a sound process for getting there and  
6 getting that outside help.

7  
8 Council President Praisner,  
9 Councilmember Elrich.

10  
11 Councilmember Elrich,  
12 I just want to be sure that --.

13  
14 Council President Praisner,  
15 Your mic Marc.

16  
17 Councilmember Elrich,  
18 I just want to be sure that --.

19  
20 Council President Praisner,  
21 Marc mic.

22  
23 Councilmember Elrich,  
24 I want to be sure that the pieces that we have here can be bitten off in small enough  
25 bites that they are understandable and that people who might respond to an REOI can  
26 respond to pieces of it rather than say, you know, given the scope of this I cannot do the  
27 whole thing. I mean, we might narrow down the universe, you know, going back to the  
28 Adventist issue, I mean, those questions to me are very discrete and fairly easy to get a  
29 handle on. And somebody might be able to respond to that, might look at the rest of this  
30 and balk. So, I want to know what -- it's nice to know who the people are out there in the  
31 community who can provide these kinds of assessments and what the scope of the kind  
32 of work they're going to do. If that's all this is; that doesn't bother me but I want to be  
33 sure that we can get the piece we want and not necessarily have to buy the whole thing  
34 in order to get the little piece and I certainly would like some input from the Executive. I  
35 mean, this train ought not leave the station without something more than a nod, you  
36 know, here is a list of questions. I mean, they need to be prepared to sit down in this  
37 discussion I think next week and talk about what questions they want answered and  
38 how they view the County playing a role in assessing these future needs. I mean I really  
39 don't want to do this absent input from the Executive Branch.

40  
41 Councilmember Leventhal,  
42 Great. Madam President, may I just respond to that very quickly? I think, Mr. Elrich, I  
43 think that point is very well taken and the issue of what if there's a vendor who only





July 24, 2007

1 wants to take a small slice of all this work, would we consider such a vendor would be  
2 an excellent question to put to the Executive Branch next week.

3  
4 Council President Praisner,  
5 Councilmember Trachtenberg.

6  
7 Councilmember Trachtenberg,  
8 Again I just want to make two brief remarks. I don't think George that there is any  
9 disagreement that we need to evaluate the status of health services here in  
10 Montgomery County specific to the functioning of the hospitals that serve this  
11 community. There is no disagreement about that. I think what I have difficulty with, and  
12 again this is something that I speak to from a public health training; what I have a  
13 discomfort with is really entering the dangerous territory of economic viability. And that  
14 is part of what I believe Councilmember Elrich has raised as well. In other words, I  
15 believe that something that there is adequate data available to evaluate and I also  
16 believe that something, a decision in particular that the Health Care Commission make  
17 a decision on, not us. And I think putting us in a position where we're establishing  
18 viability or lack of it is a very bad place for us to go. Plus, I really think doing anything  
19 where we have one hospital in the queue over another, in other words somebody  
20 comes first gives one private institution an advantage over the others that function here  
21 in the County and I think that's problematic and that has been suggested to me by many  
22 people that I have spoken with from the public health communities. So again those are  
23 my concerns and in terms of an official position from across the street, after I received  
24 the packet last night I actually did speak with people across the street and as best as I  
25 understand it, the official position is that there is no commitment at this time for a CHIP.  
26 They don't want to make that commitment just yet. The REOI would be a good way to  
27 get a sense of what the parameters of a future study could be and that was part of the  
28 rationale for being agreeable to it and to use language which has been suggested to  
29 me, if the County Council in our role as the Board of Health decides to appropriate  
30 funds for such a study, clearly the Executive Branch and his department that represents  
31 him will not block that and they will provide the parameters that they see appropriate  
32 such as the questions that Uma provided to us at last week's worksession. But it is my  
33 understanding and I think we do need clarification around this as Marc suggests from  
34 across the street but it is my understanding that there is no commitment at this point to  
35 go forward with the CHIP.

36  
37 Council President Praisner,  
38 Councilmember Leventhal this is your last shot at this and then we're going to vote.

39  
40 Councilmember Leventhal,  
41 I think we've identified --.

42  
43 Council President Praisner,  
44 A Consent Calendar.



July 24, 2007

Councilmember Leventhal,  
Yeah, and I understand this -.

Council President Praisner,  
This is only a Consent Calendar introduction.

Councilmember Leventhal,  
I'm well aware Madam President, this is only before us for introduction but my colleagues have said some things that, and we will have to vote on this. It appears it won't be a Consent Calendar item. It appears it won't be a unanimous vote. So, once an issue is put out there, I do think it's helpful, since I'm going to be counting votes for the next few days, that colleagues understand exactly what the issues are. Just to be clear, we have five hospitals in the County. One of them is changing its location. That will change its service area.

Council President Praisner,  
Proposed change.

Councilmember Leventhal,  
One of them has asked to change its location. That will have an effect on access to health care. It seems to me that Montgomery County should be in a position to assess what effect that will have and indeed state law clearly calls upon a County Health Department to provide informed input in that process. One of the major issues in that regard is the ongoing economic viability of that and other hospitals. If a Councilmember feels that we don't wish to get outside information pertaining to the future economic viability of hospitals and a Councilmember is entitled to that point of view, I do. I think that's extremely germane. I think it's very important. I don't think we can afford to lose any of our hospitals. And I don't think we can afford to stand by without weighing in on a process that might have an effect on the economic viability of any of our hospitals. And when the proposal is made on the basis that if we don't do this, our economic viability's in question, I strongly feel that we should have an outside objective third party give us feedback on that matter. In this body, we had quite a bit of discussion about the economic viability of hospitals some weeks ago and representations have been made about economic viability of various hospitals and Councilmembers have made different observations and had different speculation about that. Absolutely I want the best information that we can get on that matter. So if that's an issue of clear disagreement that we just don't want to know, we just don't think we should know, we just don't think we have the right to know, then Councilmembers can disagree about that but absolutely the claims, the competing claims about economic viability of hospitals are absolutely information that I think we should assess. And I think we have the resources to assess it. And I think it would be a shame if we didn't assess it. And I don't think we can afford to be in the dark about that.



July 24, 2007

1 Council President Praisner,  
2 Marc -- last comment please.

3  
4 Councilmember Elrich,

5 The problem is that I don't know if we can know what it is you want to know and I don't  
6 know that we can do anything about it if we did know. I'll give you an example, the  
7 closure of Prince George's Hospital, which if it likely happens, you know, one of the  
8 points that people have made is, you can point to the uncompensated care and you can  
9 point, on the other hand that the state gave them more money than God to deal with  
10 uncompensated care, there is a problem with how you compensate physicians which,  
11 you know, I think the state ought to address but the other thing they said in there was  
12 that one of the major reasons for failure of that hospital is the management of that  
13 hospital. We have zip, zero control over the management of any hospital. And they can  
14 come in and say their, you know, their financial viability, but I don't want to get into  
15 details of certain hospitals, but I can tell you that some hospitals that say they have  
16 financial viability issues the state will also say they have management issues in  
17 Montgomery County. And how are we going to parse that out? Are you simply going to  
18 say that all of the economic viability issues are because of new technology and the  
19 changing demographic or are we willing to say, you don't manage yourselves very well,  
20 you have high costs to patient, you do a bunch of other things that are wrong and we're  
21 going to hold you accountable for that too. It seems to me a real honest evaluation of  
22 economic viability has to factor in everything. And I think that becomes incredibly  
23 political. And we're going to be sitting here saying we don't believe you, you're saying  
24 you're not viable because of the uncompensated care load, somebody is going to say,  
25 well actually, you're unviable because of your bad management practices. That's not  
26 something we should do. And the state knew that Prince George's County was headed  
27 for disaster for a long time, this is no surprise to anyone, they just never dealt with the  
28 management issues. And even the state couldn't make them deal with the management  
29 issues. And one of the things the state does sometimes to deal with management  
30 issues, which is counterintuitive, is actually reduces the allowed rate increases because  
31 they say that, you know, you can't get this rate increase because part of the problem is  
32 self inflicted. And so do you just, you know, continue to give rate increases because  
33 people refuse to deal with self inflicted wounds? And I think our primary goal ought to be  
34 the assessment of the health care needs and what we can do to stimulate a larger  
35 discussion about how we address those needs. And I certainly am interested in how the  
36 hospitals play a role in that and I'm not interested in shutting down hospitals but if there  
37 is an element, or an area of that debate I don't think that we're well served if we get into.

38  
39 Council President Praisner,

40 Okay. It's obvious that there is a lot of issue and strong feelings about this but it is also  
41 obvious to me since I spent 6 years on a hospital board and I don't think anybody else  
42 on this side of the table has had that wonderful experience, it's also obvious to me that  
43 it's a very complicated issue. I will consult with Linda Lauer to see how the Council  
44 might best respond and interact with the Executive Branch as well. And I would like



July 24, 2007

1 when we have further discussion on this issue to have Executive Branch representation  
2 that can articulate specifically the elements of an REOI because it seems to me that  
3 that's where the difference of opinion is focused. And also it seems to me that the list of  
4 questions proffered by all is both confusing and complicating the issue. What we need  
5 to know are what are the specific questions the Executive Branch recommends would  
6 be either part of the REOI or what general language would be part of the REOI so we  
7 can have a more complete and common understanding of what we would be  
8 approaching. So, the Consent Calendar is before us with that understanding. All in favor  
9 of the Consent Calendar please do so by raising your hand. It is unanimous among  
10 those present. I should note that Councilmember Berliner is out of town on business  
11 and cannot be here today. Alright, we are a little behind schedule but that's fine. The  
12 next item in front of us is the District Council Session Item G-858. Mr. Grossman if you  
13 would join us at the table please. This is a rezoning request and also we have received  
14 a request for Oral Argument as well. Should the Council, majority of the Council wish to  
15 consider Oral Argument that would be the first order of business for the Council's  
16 consideration. Councilmember Ervin.

17  
18 Councilmember Ervin,  
19 Thank you Madam President. A number of neighbors have filed letters and have a  
20 petition opposing this development and are seeking instead to have a park on the  
21 subject's site and many have raised issues associated with storm water management  
22 and sewer capacity. So, I would like to make a motion to approve Oral Arguments so  
23 the Council will have the opportunity to hear from the neighbors.

24  
25 Councilmember Elrich,  
26 Second.

27  
28 Councilmember Ervin,  
29 And I also understand from Council staff that I must also move to approve the resolution  
30 extending time for action on the zoning case.

31  
32 Council President Praisner,  
33 Okay. Let's do these but be clear about each of the pieces. The motion has been made  
34 by Councilmember Ervin, seconded by Councilmember Elrich to request Oral Argument.  
35 In order to be clear about what the focus of the Oral Argument would be I want to make  
36 sure that we're clear about the parameters of that Oral Argument question and to the  
37 extent that other Councilmembers have questions as well that come from the packet  
38 that they would want the Oral Argument to focus on. As I understand it Councilmember  
39 Ervin you are suggesting or requesting Oral Argument around the issue of storm water  
40 management and also around the issue of use of this land or some of the land for a  
41 park, is that what you're saying?

42  
43 Councilmember Ervin,  
44 Correct. Yes.



July 24, 2007

1  
2 Council President Praisner,  
3 Okay. And I see lots of lights. If the Council should approve the request for Oral  
4 Argument then the second item we would have to do is extend the time for  
5 consideration of this as a subsequent so you know that if you vote for Oral Argument  
6 you also have to vote for extending the time. Okay. There are quite a few lights. I'll turn  
7 to Councilmember Floreen who I think was next.

8  
9 Councilmember Floreen,  
10 Thank you Madam President. Well actually I had a, I think I should make this disclosure  
11 on the record. I realized after reading this that Habitat for Humanity may be participating  
12 in the construction of MPDUs in this project and I just wanted to note for the record, I'm  
13 on the board of Habitat for Humanity Montgomery County. So I wanted to note that. The  
14 other thing though, if there is going to be Oral Argument on this, the community should  
15 beware as is indicated in the draft Council opinion that a decision on rezoning would not  
16 resolve any issue as to acquisition for parkland. That's noted throughout the record. And  
17 so, just so folks know that is a separate issue independent of this zoning case.

18  
19 Council President Praisner,  
20 Councilmember Trachtenberg.

21  
22 Councilmember Trachtenberg,  
23 Just briefly I would speak in support of the motion that was provided by Councilmember  
24 Ervin. My office has had communication with folks from the area where this project  
25 would be developed and I think it's really important that we have the opportunity for the  
26 community to participate in a public conversation.

27  
28 Council President Praisner,  
29 Councilmember Trachtenberg, when you say that you have had communication with the  
30 community, are you talking about the correspondence we have received or are you  
31 talking about further communication?

32  
33 Councilmember Trachtenberg,  
34 Not further communication just e-mails that have been sent.

35  
36 Council President Praisner,  
37 What kind of e-mails because this is a matter that must be considered on the record and  
38 Councilmembers should not have been receiving any e-mails so we have a problem.

39  
40 Councilmember Trachtenberg,  
41 Okay. What I would tell you is that I believe there were one or two e-mails that came in.  
42 I didn't look at them directly. I was just told about them.

43  
44 Council President Praisner,



July 24, 2007

1 Well, you should not have had any conversation, let's go over this. When we're doing a  
2 rezoning there must be no communication between Councilmembers and anyone on  
3 these issues. This issue is to be decided based on the written record of the case plus  
4 any formal written correspondence that we receive that is officially received by the  
5 Council that may request Oral Argument. No other communiqué or documents can be  
6 considered and no verbal communication can occur between Councilmembers and  
7 anyone involved with the case.

8  
9 Councilmember Trachtenberg,  
10 Okay. I didn't have any communication. In other words I'm aware of them. I haven't seen  
11 them. I haven't spoken with anyone. But I believe that there were one or two things that  
12 were sent to my office, not to my personal e-mail.

13  
14 Council President Praisner,  
15 Well, anything that was sent to your office for which you were informed that is not part of  
16 the formal record in front of us needs to be shared with Mr. Zyontz and needs to be  
17 incorporated into the record and needs to be shared with the applicant as well as  
18 anyone else on the record.

19  
20 Councilmember Trachtenberg,  
21 Okay.

22  
23 Council President Praisner,  
24 I think I'm following procedure Mr. Zyontz.

25  
26 Jeff Zyontz,  
27 You also have to, right now you cannot make it part of the record because the record is  
28 closed.

29  
30 Council President Praisner,  
31 Right.

32  
33 Jeff Zyontz,  
34 You have to disclose the communication and state that any communication you have  
35 heard will not affect your decision.

36  
37 Councilmember Trachtenberg,  
38 Right and that was what I thought I had to do so that was why I made it clear I was told  
39 that there had been things sent in.

40  
41 Council President Praisner,  
42 You should not have been told that's the problem. Councilmember Elrich.

43  
44 Councilmember Elrich,



July 24, 2007

1 I'm a little new to this process and so I want to be sure that what we discuss is, I have  
2 this official letter that has a general item number.

3  
4 Council President Praisner,  
5 Yes. That's an official letter.

6  
7 Councilmember Elrich,  
8 (laughter) And this letter from a resident lists four things that they would like to discuss  
9 which is the community response, the master plan, the Legacy Open Space issue and a  
10 certain law case in the Carol Knolls Covenants. And since those were all part of the  
11 record before the Hearing Examiner --.

12  
13 Marty Grossman,  
14 I would mention that the covenants as she mentions in the letter are not discussed in  
15 my report. They are referred to briefly in one sentence in the technical staff report and  
16 there is also mention of it in an attachment, an e-mail attachment to the technical staff  
17 report but private covenants are not part of the zoning process and the case law is clear  
18 that they should not be considered as part of the zoning process.

19  
20 Councilmember Elrich,  
21 Is this another case where we would look at the private easements or, these people  
22 have to enforce them through court?

23  
24 Marty Grossman,  
25 That's correct. And in the e-mail that's in the record the counsel for the applicant  
26 indicates that there is a court proceeding going on in which there is an attempt to  
27 indicate that these covenants are not binding any longer.

28  
29 Councilmember Elrich,  
30 And so having any discussion of that would not be proper during the --.

31  
32 Marty Grossman,  
33 It's not something that the Council should be considering, the private covenants. And  
34 they are not, so they are not part of my report.

35  
36 Councilmember Elrich,  
37 Okay, well, I would like everything else that's on here, that's been asked, basically I  
38 want to be able to hear anything that had anything to do with the case that --.

39  
40 Council President Praisner,  
41 Well, no. We are not going to have anything that's anything.

42  
43 Councilmember Elrich,  
44 Right.



July 24, 2007

1  
2 Council President Praisner,  
3 We're going to be very specific about what it is that we are requesting testimony on in  
4 order to be clear.

5  
6 Councilmember Elrich,  
7 So my list of the four things here.

8  
9 Council President Praisner,  
10 Well, I don't know what community response means. So, we can certainly have  
11 comments about the master plan to the extent that's part of the packet they may want to  
12 comment on the master plan but the master plan document is pretty clear and their  
13 comments are pretty clear but if the Council wants to hear something about the master  
14 plan, fine. If we want to hear about Legacy Open Space and Park; that has also been  
15 requested and storm water management issues. But the lawsuit is not an issue that the  
16 Council should be considering. So number four is not before the Council and I don't  
17 know what --.

18  
19 Councilmember Elrich,  
20 Same lawsuit?

21  
22 Marty Grossman,  
23 Yes.

24  
25 Councilmember Elrich,  
26 Okay.

27  
28 Marty Grossman,  
29 Which I believe it is --.

30  
31 Council President Praisner,  
32 I think community response is too broad a term and not specific enough so I would just  
33 suggest that we're talking about the master plan, we're talking about Legacy Open  
34 Space and Park and we're talking about storm water. And those are the three issues  
35 that I heard explicitly requested to have public testimony in our Oral Argument about.

36  
37 Councilmember Elrich,  
38 If the community response, if I interpret that correctly which is probably their view of  
39 what was intended by the plan for the area, then the neighborhoods when they cite  
40 specific neighborhoods, which I can't tell from this, but may or may not have  
41 associations which had views on this, then we should be able to hear the association's  
42 views on how this project is or is not in their mind consistent with the master plan.

43  
44 Council President Praisner,





July 24, 2007

1 The master, you have got to be careful Marc.

2  
3 Councilmember Elrich,  
4 I'm trying to be careful.

5  
6 Council President Praisner,  
7 It's a record that's in front of us. If you want amplification on something on the record.

8  
9 Councilmember Elrich,  
10 Yes.

11  
12 Council President Praisner,  
13 Community response in the broadest sense is in the record on specific issues so you  
14 need to be clear about what the specific issue is that you want conversation, Oral  
15 Argument about. We have to fair to both the community testifying or I'll rule them out of  
16 order on the issues that are not part of the hearing. And you need to be clear to the  
17 applicant as to what is before us for hearing.

18  
19 Councilmember Elrich,  
20 That's what I was trying to be clear.

21  
22 Council President Praisner,  
23 Community response is too broad.

24  
25 Councilmember Elrich,  
26 That's what I was trying to be clear, that it was in relation to the master plan.

27  
28 Council President Praisner,  
29 Okay.

30  
31 Councilmember Elrich,  
32 Rather than generic.

33  
34 Council President Praisner,  
35 Okay, so that's item number 2 that we've already discussed.

36  
37 Councilmember Elrich,  
38 Okay.

39  
40 Marty Grossman,  
41 Well, I should mention Madam President, that this is an unusual case because much of  
42 what is at issue and being discussed here in terms of Oral Argument did not come up in  
43 the hearing itself. At the hearing there was no opposition per se, there was testimony  
44 from one person, Mr. Belcher on behalf of a citizens association, the, sorry, the



July 24, 2007

1 McKinney Hills Carol Knolls Civic Association but he specifically indicated that the  
2 Association had not voted for or against the proceeding. And he raised concerns, all of  
3 which I dealt with at some length in my report. But as I say, there was no opposition as  
4 such at the hearing. Much of what has now been discussed in terms of Oral Argument  
5 came after the hearing. There was some mention in some e-mails attached to the  
6 technical staff report prior to the hearing about this question of the Legacy Open Space  
7 and as I discussed in my report, Legacy Open Space is really not before the Council as  
8 Ms. Floreen has indicated; it is not before the Council at this point. -- we have to be  
9 careful.

10  
11 Council President Praisner,  
12 It's a park issue though that Councilmember Ervin has asked about; is that part of  
13 record?

14  
15 Marty Grossman,  
16 Well, it is part of the record certainly that people have asked that this property be  
17 treated as a park. But once again, that can only happen in this part of this Legacy Open  
18 Space program which is not before the Council at this point. It may well be treated as a  
19 park at some future point. It is in the record that there is an application pending filed by  
20 a citizen to have this treated as Legacy Open Space and that is now before the  
21 technical staff of the Maryland National Capital Park and Planning Commission but it's  
22 not before the Council at this point. And as I discussed at some length in my report,  
23 there was a process and the Council's own language in terms of the resolution creating  
24 the Legacy Open Space program indicates that this should not be part of the rezoning  
25 request.

26  
27 Council President Praisner,  
28 Okay, so any reference to Legacy Open Space is not part of this rezoning?

29  
30 Marty Grossman,  
31 That's correct.

32  
33 Council President Praisner,  
34 Okay. We're clear about that issue folks? And folks who may want to testify, clear about  
35 the fact that Legacy Open Space is not part of this hearing and not part of the rezoning  
36 and we will not accept testimony associated with Legacy Open Space if the majority of  
37 Councilmembers support Oral Argument. Mr. Zyontz.

38  
39 Jeff Zyontz,  
40 Just one other thing, Councilmember Elrich was looking for other specific criteria that  
41 was requested for Oral Argument; there was also a request to review traffic issues. It  
42 was there. So, just bringing that to your attention.

43  
44 Marty Grossman,



July 24, 2007

1 I should also mention, in connection with both the traffic issues issue and the sewerage  
2 and storm water questions; there really, once again, is very little in the record if anything  
3 in the record opposing what has been suggested by the applicant here on these issues.  
4 The only evidence in the record regarding traffic is that this particular development will  
5 reduce traffic rather than increase traffic. The evidence regarding storm water and  
6 sewage backup is that this development will if anything reduce the amount of storm  
7 water problems and in terms of sewage backup, the testimony is that it will have no  
8 adverse impact whatever. That's what's in the record here. And so --.

9  
10 Council President Praisner,  
11 But to the extent that it's in the record and that the community has asked for Oral  
12 Argument on that issue; it is a subject that we could discuss.

13  
14 Marty Grossman,  
15 Absolutely.

16  
17 Council President Praisner,  
18 Storm water issue.

19  
20 Marty Grossman,  
21 Yes but they can't go outside and create additional facts that are not in the record.

22  
23 Council President Praisner,  
24 Correct. The storm, and your point is there is very little in the record because of the way  
25 it was dealt with.

26  
27 Marty Grossman,  
28 That's correct.

29  
30 Council President Praisner,  
31 And again, I would remind the community and anyone should the Council decide to go  
32 to Oral Argument, the Hearing Examiner's responsibility during the Oral Argument  
33 process is to stop with my assistance any testimony that is outside the record. So  
34 anyone who attempts to testify on items that are not part of the record they will not be  
35 allowed to proceed. I want to make sure folks understand that. Mr. Zyontz you wanted  
36 to say something else? Ms. Floreen or Marc are you done? Okay.

37  
38 Councilmember Elrich,  
39 My only concern has been in this back and forth, I felt like you were arguing the case  
40 and, so my question is, shouldn't you just be putting out there, you know, what the  
41 parameters are without also telling us what your conclusion is? I mean, I read in the  
42 report and I'm trying to avoid saying what I agree with or disagree with.

43  
44 Council President Praisner,



July 24, 2007

1 I strongly disagree with that Marc.

2  
3 Councilmember Elrich,  
4 Okay.

5  
6 Council President Praisner,  
7 He's trying to advise us as to what the limited amount of the record is so that folks  
8 understand. He's telling us there is very little in the record on these issues.

9  
10 Councilmember Elrich,  
11 But saying that there is going to be less of this and less of that is a conclusion which is  
12 different than telling me there is a limited amount of evidence on the record.

13  
14 Council President Praisner,  
15 He's repeating what the judgment was on that issue. He's not advocating one way or  
16 the other.

17  
18 Marty Grossman,  
19 Right. I'm just saying what the evidence, the evidence that came in at the hearing  
20 because of the fact that there was not participation -- by these folks. The issues were  
21 raised and they were dealt with by the evidence that was submitted by the applicant and  
22 by technical staff and so that's what the record is.

23  
24 Councilmember Elrich,  
25 Okay.

26  
27 Council President Praisner,  
28 Okay, Councilmember Floreen.

29  
30 Councilmember Floreen,  
31 Thank you. Well, since we're on this, let me ask the Hearing Examiner this question.  
32 What are the master plan issues that came up in the hearing?

33  
34 Marty Grossman,  
35 There were no master plan issues that came up. The hearing in terms of the master  
36 plan consisted of the land use expert of the applicant testifying as to his concept of how  
37 this complies with the master plan. It was also a discussion of the master plan in the  
38 technical staff report and in attachments to the technical staff report, all of which was in  
39 support, saying that there was compliance with the objectives of the master plan. This  
40 property although listed as, not parkland, but -- no not in terms of the zoning but in  
41 terms of the land use have a quasi-governmental designation because it had been a  
42 park used for institutional use. But the point was that that is not part of the objectives of  
43 the master plan. The remainder of the testimony was that it was very consistent with the  
44 master plan. It's consistent with the nature of the use in the area, the residential use. It



July 24, 2007

1 was consistent with the transportation goals. Consistent with the environmental goals  
2 and so on and so forth throughout. That's what the record consists of in terms of the  
3 master plan.

4  
5 Councilmember Floreen,  
6 Was there much discussion of this property in the master plan?

7  
8 Marty Grossman,  
9 No there is no discussion of this property per se in the master plan.

10  
11 Councilmember Floreen,  
12 Okay. Alright. Thank you.

13  
14 Council President Praisner,  
15 Councilmember Leventhal.

16  
17 Councilmember Leventhal,  
18 I came to this meeting prepared to vote for Oral Argument. I wanted to clarify that a vote  
19 for Oral Argument is without prejudice and that I will listen to Oral Argument but that I  
20 will also keep a complete open mind with respect to evaluating the record and making a  
21 judgment as to whether the rezoning that has been applied for seems to satisfy the  
22 requirements of law which is the question before the District Council when a local map  
23 amendment comes before us. What this conversation suggests to me Madam  
24 President, and I made an observation similar to this last week, is that perhaps we could  
25 organize a little primer on the Regional District Act for ourselves and our staffs and a  
26 little refresher on the ex parte rules both with respect to matters pending before the  
27 Council and matters pending before the Planning Board. So maybe that's something we  
28 could work with our staff and Planning Board staff.

29  
30 Council President Praisner,  
31 I already have that list and I think that's excellent Mr. Leventhal, we talked about it last  
32 week and I couldn't agree more that it's both necessary and a good idea.

33  
34 Councilmember Leventhal,  
35 Great. So and I'll certainly participate and look forward to the refresher myself. I think  
36 we all benefit from a little refresher on that. So my vote now for Oral Argument is to  
37 enable individuals to elaborate on the record on matters that they feel require further  
38 clarification that are already in the record and I will so vote but my vote for Oral  
39 Argument is not a vote on the merits of the case and it is not to have a Hearing. The  
40 Hearing was held before the Hearing Examiner. So Oral Argument is not a Public  
41 Hearing and so I will so vote but those who look at the results of the Council's vote to  
42 allow Oral Argument should not interpret that in any way as a decision on the case and  
43 the case is solely determined as to whether the application meets the requirements of  
44 law. That is the question before us.



July 24, 2007

1  
2 Council President Praisner,  
3 Okay, the request for Oral Argument on the issues of master plan, storm water drainage  
4 and issues of question about a park that may have been within the record, that are  
5 within the record and not any testimony on Legacy Open Space and not any broad  
6 testimony beyond, any testimony that is not within the record are before us.

7  
8 Marty Grossman,  
9 I think it's also the traffic issue.

10  
11 Council President Praisner,  
12 I didn't hear that raised by Councilmembers so if we're going to add traffic we need to  
13 add that.

14  
15 Unidentified  
16 It was raised by the requestor.

17  
18 Council President Praisner,  
19 Right.

20  
21 Marty Grossman,  
22 It was raised by the requestor which is why I --.

23  
24 Council President Praisner,  
25 I'm going to vote for Oral Argument and I want to say why. I'm going to vote for Oral  
26 Argument because I think there is confusion both within the community and to a little  
27 extent on this side of the table as to what is before us and to have an opportunity for us  
28 to be clear about the arguments in the case that are part of the case. But, and in the  
29 interim I'm going to direct the People's Counsel to meet with the community to share  
30 with them and the applicant if the applicant chooses to share with them a clear  
31 understanding of what their 20 minutes can be used for and cannot be used for. I'm  
32 going to also ask the People's Counsel to prepare for us a report of how since he has  
33 participated neither in support nor opposed, how or what advice he provided during the  
34 process for this case to the community so that we might better understand how we  
35 might inform the community and Councilmembers and their staffs about what a rezoning  
36 is. I want to associate myself with the comments of Mr. Leventhal; this is a legal issue  
37 and this is a very defined issue. And I am concerned by the community's assumptions  
38 that they can request Oral Argument in a very broad sense especially if they have not  
39 participated in the case to begin with. It becomes very awkward to jump in so to speak  
40 at this point in the process. The community is not on record in opposition to this case.  
41 And neighbors I would assume receive notice. And Civic Associations receive notice.

42  
43 Marty Grossman,



July 24, 2007

1 Madam President, I should say that there was, after the hearing, there were filings by  
2 the community which I allowed into evidence, those that were signed including a signed  
3 petition and so on, expressing opposition.

4  
5 Council President Praisner,  
6 So, they are part of the record?

7  
8 Marty Grossman,  
9 They are part of the record. There were many that were submitted that were not signed,  
10 I would not permit. They were admitted over the objection of the applicant's counsel. I  
11 gave the applicant's counsel another 10 days thereafter to respond to those  
12 submissions because I had initially left the record open for some other purposes and so  
13 I allowed that in. But once again if the petition itself that was filed is linked to the park  
14 issue and the others were once again reiterating concerns that had been raised but, and  
15 were dealt with at the hearing. So I don't want there to be a misunderstanding of where  
16 were people who raised issues after the hearing in this case.

17  
18 Council President Praisner,  
19 Right, but the packet listing those who testified as part of the record indicates folks  
20 testifying but neither in support nor in opposition.

21  
22 Marty Grossman,  
23 Right. The only testimony at the hearing other than the from the applicant was from Mr.  
24 Belcher on behalf of the Civic Association in the Kenny Hills, Cedar Knolls, Carol Knolls  
25 Civic Association.

26  
27 Council President Praisner,  
28 Okay. The motion before us is for Oral Argument 20 minutes each side with those  
29 parameters given schedules this will be have to be scheduled in the fall. All in favor of  
30 the motion? Councilmember, that is unanimous among those present. Councilmember  
31 Ervin, you have another motion?

32  
33 Councilmember Ervin,  
34 The other motion I have is to approve the resolution extending time for the action.

35  
36 Councilmember Elrich,  
37 Second.

38  
39 Council President Praisner,  
40 Okay, it's been moved by Councilmember Ervin and seconded by Councilmember Elrich  
41 to approve the resolution to extend the time for consideration of this item. Mr. Zyontz.

42  
43 Jeff Zyontz,  
44 The Council needs to supply a date to time certain items.



July 24, 2007

1  
2 Council President Praisner,  
3 As to the extension?

4  
5 Jeff Zyontz,  
6 To the extension. It might be September 27th which is a Thursday, or I'm sorry, a  
7 Tuesday in September.

8  
9 Council President Praisner,  
10 I would make it the first Tuesday in October just to be certain.

11  
12 Jeff Zyontz,  
13 Okay. The first Tuesday in October.

14  
15 Council President Praisner,  
16 We'll be like the Supreme Court.

17  
18 Jeff Zyontz,  
19 Like the Supreme Court. It's the second.

20  
21 Council President Praisner,  
22 (laughter) It's the District Council Court, as close as we can get to the first Tuesday in  
23 October.

24  
25 Jeff Zyontz,  
26 Okay. And can the, is the Council prepared to set a date now so that we could notice  
27 everybody?

28  
29 Council President Praisner,  
30 I have to consult with Ms. Lauer to be able to do that. I will do so today and we will set  
31 that date. Okay. All in favor of the motion to extend the time for consideration --  
32 resolution? That is unanimous among those present. Thank you very much. We are  
33 adjourned until 1:30.



July 24, 2007



**TRANSCRIPT**  
**July 24, 2007**

**MONTGOMERY COUNTY COUNCIL**

Councilmember Marilyn Praisner, President  
Councilmember Phil Andrews  
Councilmember Marc Elrich  
Councilmember Nancy Floreen  
Councilmember Duchy Trachtenberg

Councilmember Michael Knapp, Vice-President  
Councilmember Roger Berliner  
Councilmember Valerie Ervin  
Councilmember George Leventhal



July 24, 2007

1 President Praisner,  
2 Good afternoon, ladies and gentlemen. This is a public hearing on Bill 15-07, Forest  
3 Conservation -Religious Institutions, which would further define the application of certain  
4 forest conservation requirements to certain religious institutions; and generally amend  
5 the law regarding forest conservation. A Transportation and Environment Committee  
6 work session is tentatively scheduled for July 26, at 9:30 a.m. The record will close at  
7 the conclusion of the hearing. Before beginning your presentation please state your  
8 name clearly for the record. We have five speakers: Robert DeBernardes for the  
9 County Executive; Reverend Guy Williams, Sr. for Parker Memorial Baptist Church;  
10 Wayne Goldstein speaking on his own behalf; Mildred Porter speaking on her own  
11 behalf; and Diane Hibino for the League of Women Voters. And, Bob, you're first.

12  
13 Mr. DeBernardis,  
14 Thank you, I'm Bob DeBernardis, an assistant to the Chief Administrative Officer, and  
15 I'm representing the County Executive today, and testifying in support of Bill number 15-  
16 07. Mrs. Praisner, the Executive appreciates greatly the fact that you introduced this Bill  
17 as the Council President on his behalf. Bill number 15-07 will amend the County Code  
18 so that religious institutions are not singled out and caused to meet more stringent  
19 forest conservation and afforestation standards than any other private institutions. We  
20 believe that the current County Code, which only causes religious institutions and not  
21 other private institutions, to meet the more stringent afforestation requirements that are  
22 applicable in the base zones in which their facilities are located. It violates the various  
23 constitutional protections including the First Amendment and the Fourteenth  
24 Amendments equal protection clause. We also believe that the current County Code  
25 violates the Religious Land Use and Institutional Persons Act of 2000. The Executive  
26 understands that there may be some sentiment to correct the differences in the forest  
27 conservation and afforestation standards between religious institutions and other  
28 institutions by making all institutions meet the same requirements that apply to the base  
29 zones in which they are located. That could be a future consideration that would  
30 generate additional discussion and issues that may be more far-reaching; however, we  
31 encourage you to address the immediate and perhaps unlawful and unconstitutional  
32 differences now through quick approval and passage of the Bill before you today. We  
33 look forward to working with you through the T&E Committee, and I thank you for the  
34 opportunity to address the full Council. Thank you.

35  
36 President Praisner,  
37 Thank you, Reverend Williams.

38  
39 Dr. Williams,  
40 Greetings, I'm Dr. Guy Williams, Sr., senior pastor of the Parker Memorial Baptist  
41 Church where I've had the blessed challenge of serving for 17 years, eight months and  
42 about 21 days.

43  
44 President Praisner,



July 24, 2007

1 But who's counting, huh?

2  
3 Dr. Williams,

4 That's right. Blessed challenge. Blessed challenge because so much of that time really  
5 has been spent in the process of seeking approval on what we affectionately referred to  
6 as a promise land for our ministry. We've been in that journey for every bit of about 12,  
7 almost 13 years now, and have spent well over \$1 million or accrued bills in well over \$1  
8 million toward our attorneys and engineers and so forth. And while we appreciate the  
9 nature of forwarding their industry, we prefer exercising that use of revenue to a much,  
10 much better cause. We're here today obviously for the appeal to the County Council  
11 that you would in fact make the change on the existing law. I want to be clear that we're  
12 not here asking for a favor, we're not asking for special exception, rather we're simply  
13 asking that you do what is both legally right, we believe, and principally right with  
14 respect to our (inaudible) and the Parker congregation that's been in Montgomery  
15 County now for 87 years, I believe come this November. We're just about through,  
16 hopefully, all of the hoops that we've -- fiery hoops that we've had to go through  
17 associated with our developmental plans to meet, hopefully, the deadline of next month,  
18 getting our preliminary plan approved by the Park and Planning. Of course, everything  
19 else has been approved. To our understanding, we've had so many hours that I can't  
20 even calculate and so much more money that's been spent to meet all the requirements  
21 and demands; this is the last item. We have no problems with the principles of  
22 forestation; we just don't want to be held to a more stricter standard where we have to  
23 spend even more money than even some other uses. So that's the reason for our being  
24 here, and appreciate your hearing what we have to say. The balance of my time, I'd like  
25 to cede to Mr. Vianai, our attorney of McGuire Woods.

26  
27 Mr. Vianai,

28 Good afternoon, members of the Council, I appreciate you taking the time to listen to us.  
29 Briefly just in terms of the history, you already have the letter from us in the record so I  
30 won't go into that. But if you will remember, many of you were on the Council last year;  
31 this project came back before the Council for a water and sewer category change. At  
32 that time the Council approved it subject to a preliminary plan that they reviewed at that  
33 time. That very same preliminary plan was -- that you approved that category change in  
34 April of '06; we submitted that preliminary plan in June of '06. We've been through DRC.  
35 We've addressed all the technical comments to the staff's satisfaction. The one  
36 outstanding issue we have is this forest conservation issue. And long story short, you  
37 had the same improvements were on the property and (inaudible) offered by a religious  
38 institution, all the offsite forest -- all the forest mitigation measures could be handled  
39 onsite.

40  
41 President Praisner,

42 Thank you. Mr. Goldstein.

43  
44 Mr. Goldstein,



July 24, 2007

1 I'm Wayne Goldstein. I'm president of the Montgomery County Civic Federation and a  
2 member of its Environment Committee, but I'm speaking as an individual. I have just  
3 learned some -- just listening to previous testifiers some additional information that  
4 changes my recommendations, which is really the approp -- we are now about to look at  
5 the Forest Conservation Law in its entirety and a number of amendments. And I  
6 understood that there would not be piecemeal amendments to that. This is a piecemeal  
7 amendment. I would expect and hope that if we are serious about making our Forest  
8 Conservation Law actually increase the amount of forest rather than slow the loss of  
9 forest that we will require all institutions to follow the Forest Conservation Law  
10 requirements for the base zone that they are in. Our goal should be to raise the bar for  
11 the rest rather than to lower the bar for one. And it just seems to be for the benefit of  
12 one institution that wants to move forward and needs this little thing in order to save  
13 money, and it does not even, I believe, adjust -- address the whole purpose of  
14 (inaudible). And well since Parker Memorial is -- as Baptist churches are, they want the  
15 same treatment as other institutions then I would expect if the requirements for other  
16 institutions were raised up to the level that they are experiencing that they won't argue  
17 that they should be treated differently. But in any event, I'm opposed to this amendment  
18 because both its timeliness and its appropriateness given -- we're looking at the entire  
19 Forest Conservation Law. And I think we need to work more to figure out more ways to -  
20 -forest areas and large tracts of land on which institutions stand are our best chance as  
21 opposed to say individual houses and developments. Thank you.

22  
23 President Praisner,  
24 Thank you. Mildred Porter.

25  
26 Ms. Porter,  
27 My name is Mildred Porter. I live at 3310 May Street, Silver Spring, Maryland. The  
28 passing of this Bill would be a great benefit to the development for the Montgomery  
29 County Faith Community. In reference to the Forest Conservation Law, the religious  
30 institutions should be treated the same as other secular institution that are clearly in the  
31 institution and development (inaudible) category. The religious institution was singled  
32 out and excluded the from institutional development area category. This injustice  
33 caused a burden on the faith community by having to spend more money for  
34 development. This waste in money can be used in other area -- more needed areas by  
35 the faith community. It is not fair for the religious institutions to have -- to need a more  
36 stringent set of forest conservation and afforestation standards than other secular  
37 institutions. I am in favor of Bill 15-07 because it will amend the law regarding forest  
38 conservation and its application to certain religious institutions. Thank you.

39  
40 President Praisner,  
41 Thank you. Diane.

42  
43 Ms. Hibino,



July 24, 2007

1 Good afternoon. I am Diana Hibino. I live at 5051 Walkershire Road, Bethesda,  
2 Maryland. I'm speaking to oppose Bill 15-07 to amend the Forest Conservation Law.  
3 The League of Women Voters has a long history of caring about the environment and  
4 promoting the protection and enhancement of natural resources. The League promotes  
5 an environment beneficial to life through the protection and wise management of natural  
6 resources in the public interest. Relevant to this bill, we believe that it would not be in  
7 the public interest to reduce the reforestation and afforestation requirements of the  
8 Forest Conservation Law. The League's stance on global climate change is that it is one  
9 of the most serious threats to the environment, health and economy of our nation.  
10 Recent scientific studies show that global warming is already causing environmental  
11 changes that will have significant global economic and social impacts. The League  
12 believes that now is the time to act on global climate change. State and local initiatives  
13 are proving that answers do exist. The positions that the County has recently taken that  
14 we applaud are the County's recent steps to encourage energy conservation and  
15 combat climate change and global warming. In light of your votes on these vital matters,  
16 we view Bill 15-07's proposed amendment of the Forest Conservation Law as  
17 problematic. It would be a step backward and counterproductive to the County's own  
18 goals regarding increasing energy conservation and decreasing global warming. As you  
19 know, the aim of the Bill is to lighten the responsibility of religious institutions to live up  
20 to the forest conservation requirements of whatever zone they're in. They would be  
21 moved into an institutional category that includes schools and governments, and which  
22 requires less in the way of reforestation and afforestation. Allowing them to do this  
23 would decrease the amount of reforestation that the County badly needs to reduce  
24 deficit in tree canopy in the county. It seems to us that it would be more logical for the  
25 County to choose to examine ways to increase the percentage of trees in all zones  
26 rather than passing a bill that would reduce forest conservation requirements. We look  
27 forward to a more comprehensive, productive and appropriate set of amendments to the  
28 Forest Conservation Law. And thank you for allowing us to speak.

29  
30 President Praisner,

31 Thank you. I have several Councilmembers who have questions. Councilmember Elrich.  
32 Mike, Marc.

33  
34 Councilmember Elrich,

35 Question for staff is could we get information on how many churches are affected by  
36 this or have been affected and how many other private institutions have taken  
37 advantage of the lower standards recently. And just my own clarity, whatever other  
38 private institutions might take advantage of lower standards. Is it private schools and  
39 other -- if it was a nonprofit that wanted to build a, you know, say Howard Hughes  
40 Medical just for lack of another nonprofit; would they be able to take advantage of this?

41  
42 Mr. Faden,

43 I think they'd be considered in the institutional category, yes.



July 24, 2007

1 Councilmember Elrich,  
2 And so they would meet a lesser standard?

3  
4 Mr. Faden,  
5 Right.

6  
7 Councilmember Elrich,  
8 Okay. I guess my question for folks in Parker Memorial; if the county were to eliminate  
9 the exemption for all institutions, are you okay with that?

10  
11 Mr. Vianai,  
12 I think the thrust of our conversation is we believe the current law it violates our  
13 (inaudible). At the end of the day our (inaudible) says you have to treat all institution  
14 (inaudible) standard uses the same. If the County puts all institutional uses in the same  
15 underlying zone, I don't see how that violates our (inaudible) to be quite candid.

16  
17 Councilmember Elrich,  
18 Okay. And my question from the County -- from the Executive side; you say that it might  
19 be unlawful, it might be unconstitutional. I'm just puzzled because after all this time this  
20 is not like a new issue around here. I mean do we have a stronger opinion than might? I  
21 mean is there reason why you don't think it's unlawful or unconstitutional.

22  
23 Mr. DeBernardis,  
24 No, I think the County Attorney's position is that it is unconstitutional.

25  
26 Councilmember Elrich,  
27 So the word "might be unlawful" is an understatement of the position?

28  
29 Mr. DeBernardis,  
30 Yes.

31  
32 Councilmember Elrich,  
33 Okay.

34  
35 President Praisner,  
36 Councilmember Floreen. Oh, I'm sorry, Marc, are you done?

37  
38 Councilmember Elrich,  
39 Yeah.

40  
41 President Praisner,  
42 Councilmember Floreen.

43  
44 Councilmember Floreen,



July 24, 2007

1 Thank you. Mr. DeBernardis, I'm a little unclear as to what you're saying as this is the  
2 County Executive's legislation.

3  
4 Mr. DeBernardis,  
5 Yes.

6  
7 Councilmember Floreen,  
8 And with respect to what Mr. Elrich just mentioned and actually Mr. Goldstein -- a  
9 couple of people, you say on the second page is that you understand there may be  
10 some sentiment to changing the differences in treatment for institutions. And if that is --  
11 so I'm trying to understand what it is you're advancing; this particular legislation or  
12 something else?

13  
14 Mr. DeBernardis,  
15 Yes, let me be -- .

16  
17 Councilmember Floreen,  
18 Well because this obviously very vague (inaudible).

19  
20 Mr. DeBernardis,  
21 Let me very clear that the County Executive is -- is -- wants this legislation passed.

22  
23 Councilmember Floreen,  
24 Okay. This particular one?

25  
26 Mr. DeBernardis,  
27 That's correct.

28  
29 Councilmember Floreen,  
30 All right. Okay. I just wanted to be clear on that. Thank you. And, Mr. Vianai, you gave  
31 us a different draft -- some different language. Was it -- taking a look at it, it seems to  
32 me you just added religious institutions to the definition of institutional development as  
33 opposed to eliminating a reference,

34  
35 Mr. Vianai,  
36 Correct.

37  
38 Councilmember Floreen,  
39 I'm guessing to make it clear that it is that we're talking about (inaudible).

40  
41 Mr. Vianai,  
42 That is correct. We ran out -- we ran out of time in our presentation that was going to  
43 address that. All we're doing is -- .  
44



July 24, 2007

1 Councilmember Floreen,  
2 Did you finish your presentation?

3  
4 Mr. Vianai,  
5 The presentation would have been -- if the Council's indulgence.

6  
7 President Praisner,  
8 If you could just answer the question.

9  
10 Mr. Vianai,  
11 The presentation would have been (inaudible) for the reason we believe the current law  
12 is unconstitutional. And if you were going to go -- to ask us to go forward with this  
13 legislation, we thought that this was an appropriate technical amendment because I  
14 think it correctly reflects the intent of the legislation. It's clear, I think, from the legislative  
15 history so far that the intent is to fold religious institutions back into the institutional  
16 developmental area, but are that legislation that I proposed there all that would do is just  
17 add the word religious institutions into the definition. That was it.

18  
19 Councilmember Floreen,  
20 Okay, so basically what it would do, it's like the box is here. It's not eliminating the  
21 obligation to address forest conservation; it just is the question of which category for -- ?

22  
23 Mr. Vianai,  
24 Correct it -- it's attempting to -- .

25  
26 Councilmember Floreen,  
27 For a conservation threshold, and required afforestation obligations, much like high  
28 density development, mixed use, planned unit development and, well those are the  
29 ones that make it comparable.

30  
31 Mr. Vianai,  
32 That is correct. And is essentially the point we're trying to make in my letter on page  
33 eight in your report, where if this were an institute -- if this were a particular use for  
34 classified as other institutional uses, it would then be held to that standard. But because  
35 in this case we are segregated out from that, we are held to a much higher, stricter  
36 standard. If we were under the institutional development we would meet all our onsite --  
37 our reforestation site onsite. But because of that -- because the improvements proposed  
38 as known by a religious institutional to secular institution, we're required to pay --  
39 contribute for two and a half acres of offsite improvement. And I don't know that I see in  
40 the record here a valid empirical or scientific basis for that distinction. And if the purpose  
41 of the Forest Conservation Law is to protect trees, then regardless of the ownership of  
42 the particular proposed improvements, the standards should be the same. In this case  
43 the law as it's currently drafted makes the distinction between secular and religious  
44 institutions. And that was the point I was trying to make.





July 24, 2007

Councilmember Floreen,  
Okay. Thank you.

President Praisner,  
Councilmember Ervin.

Councilmember Ervin,  
Thank you. I'd like to address Mr. DeBernardis' statement on the second page, you're middle two bullets. That could be a future consideration that would generate additional discussion and issues that may be more far-reaching; however, we encourage you to address the immediate and perhaps unlawful and unconstitutional differences now through quick approval and passage of the Bill before you today. I think we're all trying to get real clear with what the County -- is the County in violation of its own code? And I'm very curious because on the first page of your statement, you say it. We believe that the current County Code violates the religious land use and Institutional Persons Act of 2000. So we're being asked to quickly through this -- through your statement to quickly approve the Bill because there are some serious issues here at the County level with violation of our own code; is that correct?

Mr. DeBernardis,  
Yes, the County Attorney believes that as it is currently written that separating these out and making this distinction is unlawful and unconstitutional. That is the position that the County Attorney. And we have a representative -- if I'm not represented from the County Attorney's office is here today.

Councilmember Ervin,  
I have a follow-up question, and that is what are issues that may be more far-reaching? You sort of allude to these issues, but they're not addressed. What are the more far-reaching -- ?

Mr. DeBernardis,  
What I referred to there is that should -- if you bring -- if you leave the standards for the religious institutions and bring the other institutions -- cause them to meet those more stringent standards, there could be other issues that would be raised by other constituency groups. That's what is meant there.

Councilmember Ervin,  
I'd like to add my name as a cosponsor.

President Praisner,  
Okay. Councilmember -- Council Attorney's light is on. Do you want to comment on the response to testimony?



July 24, 2007

1 Mr. Faden,

2 I just wanted to ask one question for the record, if I could of Mr. Vianai. Is the reason the  
3 church would face a higher standard is because they're located in an agricultural and  
4 resource zone as opposed to a residential zone?

6 Mr. Vianai,

7 That would (inaudible) they -- let me get the standards here. It is because they are in an  
8 agricultural resource zone.

10 Mr. Faden,

11 Okay.

13 Mr. Vianai,

14 That is why they would have the higher standard. However, you know, there are other  
15 medium density residential and that would be a higher standard yet again. The  
16 institutional development standard is 20%. You know, there are other -- and I really --  
17 given the fact that you're talking about religious institutions which are historically  
18 nonprofit institutions have limited funding, you know. Realistically you're not going to  
19 find religious institutions proposing new projects in the CBDs in the areas. They're going  
20 to go with the areas or, you know, more affordable thus tend to be the religious -- the  
21 agricultural and the rural areas. Which is some of the debate -- same debate we had  
22 last year -- two years ago on the water (inaudible).

24 President Praisner,

25 Sounds like the water and sewer category issue.

27 Mr. Vianai,

28 Exactly.

30 President Praisner,

31 Councilmember Leventhal.

33 Councilmember Leventhal,

34 I just wanted to clarify a couple of points. I know, Madam President, we're not debating  
35 the legislation now; it's just a public hearing.

37 President Praisner,

38 Correct.

40 Councilmember Leventhal,

41 But our LOPA is federal law passed by Congress; it's not an aspect of the County Code.

43 President Praisner,

44 Correct.



July 24, 2007

Councilmember Leventhal,

And the Supreme Court has held that it is valid, and actually Congress passed it based on some Supreme Court decisions that arose out of local government. So where local government had passed lands use restrictions unique to religious institutions, the courts had found that those were impermissible and then Congress acted and passed our LOPA in 2000. So the conflict is not with the County Code; the conflict with federal law. The County Attorney's position on this has been consistent. In 2001, the County Attorney advised the Council that this special provision with the higher threshold for religious institutions violated federal law, but the Council acting its staff's advice went ahead and imposed this. And then the other classification in response to Mr. Faden's colloquy with Mr. Vianai, the property in question is not located in the RDT zone. I believe the zoning is RE2; am I correct?

Mr. Vianai

It's RC, I believe.

Unidentified,  
Right.

Unidentified,  
RNC.

Mr. Vianai  
RC

Councilmember Leventhal,  
RC, so I just wanted to be clear about that so when we talk about an agricultural use area, it is not in the agricultural reserve?

Unidentified,  
And it is approved for water and sewer (inaudible).

President Praisner,  
But what is the base zone requirement as far as imperviousness -- as far as coverage (inaudible) forestation requirements?

Mr. Vianai,  
It would -- here it would be 50% under this standard here -- the agricultural resource areas.

Councilmember Leventhal,  
But not for institutions?



July 24, 2007

1 Mr. Vianai,

2 If you had the same plot of land and you were putting a secular institution there, you  
3 would be required to meet a 20% threshold. Here because you're a religious institution  
4 on the same plot of land under the same zoning, you're required to meet a 50%  
5 (inaudible).

6  
7 President Praisner,

8 Right. Okay. I have two more Council lights that were on before. I'm going to call on you  
9 for questions in the public hearing process, not for statements. Councilmember Elrich.  
10 Light please, microphone.

11  
12 Councilmember Elrich,

13 The question for our attorney or the Executive's representative. If this is about fair and  
14 equitable equal treatment to other institutions, as I understand it the other institutions  
15 have to use special exceptions in order to do this. So are we conferring now an unfair  
16 advantage in religious institutions over other institutions because they won't have to use  
17 the special exception process where as all other institutions have to use the special  
18 exception process?

19  
20 Mr. DeBernardis

21 Mike, I was hoping you were going to answer something. I do not know that answer.

22  
23 Unidentified,

24 Can I have a mike?

25  
26 President Praisner,

27 Yeah, you can have Bob's; I think he's anxious to give it to you.

28  
29 Unidentified,

30 It would seem that way.

31  
32 President Praisner,

33 Mr. Royalty, you need to -- .

34  
35 Mr. Royalty

36 First of all there are -- .

37  
38 President Praisner,

39 You need to state who you are.

40  
41 Mr. Royalty,

42 Clifford Royalty from the County Attorney's office. First there are other institutional uses  
43 that are permitted by right. Secondly, the fact that the Council made a decision decades



July 24, 2007

1 ago to allow churches in all zones does not give the Council or any governmental body  
2 the right to violate rule (inaudible) or the constitution.

3  
4 President Praisner,  
5 In your view?

6  
7 Mr. Royalty,  
8 Yes.

9  
10 President Praisner,  
11 Okay.

12  
13 Mr. Royalty,  
14 I can only speak to my view.

15  
16 President Praisner,  
17 Just the question that you were asked; your opinion.

18  
19 Councilmember Elrich,  
20 But how does that address the special exception process that the other institutions have  
21 to use?

22  
23 Mr. Royalty,  
24 I don't think that is relevant to whether you can discriminate against religions. Just  
25 because you make a religion permitted -- a permitted use under the zoning ordinance  
26 doesn't mean as to forestation requirements you can treat them differently than other  
27 like uses. It just has no bearing on the issue of whether you can treat them differently.  
28 It's still discrimination. It's disparate treatment in violation of (inaudible).

29  
30 President Praisner,  
31 In your view?

32  
33 Mr. Royalty,  
34 In my view. Everything I say is my view.

35  
36 Councilmember Elrich,  
37 But it's not disparate treatment to include them -- .

38  
39 President Praisner,  
40 I just want to make sure.

41  
42 Councilmember Elrich,  
43 As a permitted use versus other institutions as a permitted use. So disparate treatment  
44 in one direction is okay -- .



July 24, 2007

Unidentified

We've actually been sued for that and I won the case. It was an establishment clause claim. And no, it's not. It is not a violation of the constitution to make them a permitted use.

President Praisner,  
(Inaudible), as I recall.

Councilmember Elrich,  
I didn't say permitted; I said disparate.

Mr. Royalty,  
Well it wasn't Ramsey; it was Jack Anderson's son, but a different case, but yeah.

President Praisner,  
Similar neighborhood.

Councilmember Elrich,  
And from our own attorney?

Mr. Faden,  
I think you've highlighted the difference in our legal analysis. I do believe that you look at the whole picture and the fact that religious institutions bare less of a burden, i.e. don't have to face a special exception where many other institutions do, does make a difference under the federal law.

President Praisner,  
Okay, folks. Councilmember Leventhal again for questions for the panel or on the Bill.

Councilmember Leventhal,  
Pastor Williams, what kind of resources does your church have to handle these kinds of costs? And how do you -- how do you raise your money? Do you have a private endowment?

Dr. Williams,  
We do not. Our resources are raised through the tithes and offerings of our members -- of our parishioners, of which an enormous amount has gone to fund issues like this; that I think is absolutely absurd. I understand that we all have our positions and perspectives. It is absolutely absurd that in my view -- and my view is not only relegated to that of the church but is also associated with my position as Voices, which is a group that represents the religious houses of worship in this county. The reality is it's the same. It's ridiculous that if in fact the congregations and houses of faith provide the kind of value that we provide to this county in multiple services that we don't advertise, it is



July 24, 2007

1 absurd that as I said in our case, over a million dollars over a ten-year period has gone  
2 to invest within fighting this foolishness. Again I understand, and I don't say that to be  
3 disrespectful, and I understand everyone has their opinion, but this is a matter of federal  
4 law. And I don't understand why we're having such a debate. I understand that ones  
5 have a right to have such a debate, but why are we having such a debate about issues  
6 of federal law? And therefore churches have to spend more money without an  
7 endowment, without being a rich congregation, though some are in this county, over  
8 what is very, very clear. It is clear to the federal government, it's clear to the Supreme  
9 Court, Why is it so unclear seemingly often to this body? I don't understand.

10  
11 Councilmember Leventhal,  
12 I appreciate that. I asked the question for a couple of reasons.

13  
14 Dr. Williams,  
15 I know I broadened my answer; I'm sorry.

16  
17 Councilmember Leventhal,  
18 No, it's fine. I asked the question for a couple reasons; the other institutions were  
19 mentioned, for example the Howard Hughes Medical Institute was mentioned by  
20 comparison.

21  
22 Dr. Williams,  
23 It would be a difference in one's income stream for certain.

24  
25 Councilmember Leventhal,  
26 And the for-profit institutions were mentioned as being -- having a more lenient standard  
27 under current law than what a church would have. And I just think it's important to bring  
28 into perspective here the relevant resources, where what we are doing as a result of my  
29 friend and the senior staff attorney's legal analysis is that not only are we -- just make  
30 sure -- I'm asking a question so see if you agree with me.

31  
32 President Praisner,  
33 Please.

34  
35 Councilmember Leventhal,  
36 Please.

37  
38 President Praisner,  
39 Ask the question.

40  
41 Councilmember Leventhal,  
42 The question is are we imposing not only a higher threshold, but that in fact that higher  
43 threshold, am I correct, is against an institution that likely has substantially fewer  
44 resources than other institutions, for-profit institutions, schools which often have private



July 24, 2007

1 endowments, not-for-profits, the Howard Hughes Medical Institute, was mentioned; that  
2 may be far better able to comply than what a church would be? And when you talk  
3 about tithes and offerings, I just want to be clear about the (inaudible) here -- the  
4 collection plate.

5  
6 Dr. Williams,  
7 That means the whatever persons -- .

8  
9 Councilmember Leventhal,  
10 We're talking about the collection plate?

11  
12 Dr. Williams,  
13 Yes.

14  
15 President Praisner,  
16 Gentlemen I'm sorry but I do think that while this is very interesting, the question is on  
17 the request in front of us and the legislation.

18  
19 Councilmember Leventhal,  
20 And so the question is how would you compare the resources available to Parker  
21 Memorial Baptist Church with resources that might be available to other institutions that  
22 would have a lower afforestation threshold; how would you compare with those  
23 institutions in terms of resources and ability to deal with legal issues and the delay and  
24 the time factor?

25  
26 Dr. Williams,  
27 Both diminished and significantly reduced in comparison is the answer to your question.

28  
29 President Praisner,  
30 This exchange leads me, unfortunately, to ask some questions myself. You said that  
31 you've been on this effort for 10 years?

32  
33 Dr. Williams,  
34 I said over 10 years actually.

35  
36 President Praisner,  
37 How many years have you owned the property that you're talking about?

38  
39 Dr. Williams,  
40 What I specifically said -- .

41  
42 President Praisner,  
43 No, I ask the question how many years, Pastor, have you owned the property?  
44





July 24, 2007

1 Dr. Williams,  
2 I believe it's been three years now.

3  
4 President Praisner,  
5 And when was this legislation passed?

6  
7 Dr. Williams,  
8 When was which legislation passed?

9  
10 President Praisner,  
11 The legislation that you are protesting and suggesting is unconstitutional?

12  
13 Dr. Williams,  
14 I think it is very clear to the record that it is 2001.

15  
16 President Praisner,  
17 So this legislation was in place prior to your purchasing the property where you would  
18 have known the requirements for forestation before you purchased the property?

19  
20 Dr. Williams,  
21 The unlawful, yes. The unlawful was there in 2001, yes.

22  
23 President Praisner,  
24 Whether it is unlawful or not, the notice of information -- you said you'd been -- I just  
25 didn't want to leave the impression that you've owned this property for 10 years.

26  
27 Dr. Williams,  
28 I didn't say that.

29  
30 President Praisner,  
31 Well, but you said you've been on this mission for 10 years, and I wanted to make clear  
32 when the property was acquired, because it's my understanding that the property that  
33 you have had several sites you've looked at over the years.

34  
35 Dr. Williams,  
36 That's correct and specifically.

37  
38 President Praisner,  
39 And so this is the most recent parcel purchased three years ago?

40  
41 Dr. Williams,  
42 Okay, may I respond to your question now?

43  
44 President Praisner,



July 24, 2007

1 Well, the question was answered; it was three years ago that you purchased the  
2 property. I would like Mr. Faden, please, because this packet refers to the discussion in  
3 2001; we don't have the full conversation from 2001. We also don't have -- and I found  
4 when I went back and looked at these categories that they're very confusing as it relates  
5 to zoning. I don't know that rural cluster is an agricultural and resource area. I don't  
6 know what medium-density residential areas refers to. The categories do not relate to  
7 the base zoning. So anyone who purchases property and says what are my forest  
8 conservation obligations would find it hard to know what zones -- the base zone  
9 requirements are. So for the Council's deliberations and consideration, I think it would  
10 be helpful for us to understand which specific zones, which are the base zones as it  
11 relates to this requirement, that we're being asked to eliminate. But also as to anyone  
12 else looking at this information, would try to understand if --zoned might be something  
13 that we would look at in the future. So that is my request. Councilmember Floreen,  
14 another?

15  
16 Councilmember Floreen,

17 Yes, more staff requests. By checking with my colleagues here, I see that we're taking  
18 this up on Thursday. And I would hope frankly that we can bring it back next Tuesday. I  
19 don't know if it's going to be in the agenda or not. I pretty much know where the T&E  
20 Committee is going to be on this. But I would say it would be helpful between now and  
21 then to put together the information on -- I don't know that we need -- maybe some  
22 people would like to the whole historic thing. But I would like to know a little bit of the  
23 history as to the exemptions that were put in. And maybe that would serve what Ms.  
24 Praisner was going to. But obviously there was some conversation as to exempting  
25 institutional areas from all this. I mean, right now if you build a private school or a public  
26 facility of any sort you are exempt for whatever reason. We'll, you're subject to the  
27 institutional development.

28  
29 Mr. Faden,

30 Right, just so the public is aware. It's not an exemption strictly speaking.

31  
32 Councilmember Floreen,

33 Right, that is what I said earlier. It's not a diminimous obligation; it's still really quite  
34 significant if you're -- depending on which kind of property you're looking at. But if you  
35 could -- if there is any sort of legislation history on this stuff you might as well put it  
36 together for the full Council. But we will have this full debate completely next -- hopefully  
37 next week. So I would ask that we bring it back as soon as we can and get through it.

38  
39 President Praisner,

40 The other question relates -- since we've had conversation about special exception, if  
41 you could prepare a chart that relates to institutions and where special exception  
42 requirements are. Okay, thank you all very much. This is a public hearing on Expedited  
43 Bill 17-07, Taxi Cabs Driver Identification Cards, which would allow the Department of  
44 Public Works and Transportation to issue temporary taxi driver identification cards to an



July 24, 2007

1 applicant without obtaining certain information in certain instances, and generally  
2 amend the law regulating taxi cabs and taxi cab drivers. A Transportation and  
3 Environment Committee worksession is tentatively scheduled for July 26, at 9:30 a.m.  
4 The record will close at the conclusion of the hearing. We have two speakers -- Carolyn  
5 Biggins for the County Executive and Retha Arens for the Coalition for Competitive Taxi  
6 Cab Industry, Inc. Carolyn, you're first.

7  
8 Ms. Biggins,

9 Thank you, Madam Chair and members of the County Council. Thank you for the  
10 opportunity to testify on Bill 17-07. I won't read directly from my testimony but rather will  
11 just hit some of the highlights. I'm Carolyn Biggins with the Division of Transit Services  
12 with the County's Department of Public Works and Transportation. The department is  
13 not opposed to this Bill. We view it as a backup in case there are delays in the criminal  
14 background check reports that we receive. However, there are two changes that we are  
15 requesting. One is to add language, such that the ID -- the temporary driver ID is null  
16 and void if the driver is found to be disqualified. And the second one is to allow the  
17 department to issue a temporary ID once we receive either the state or federal criminal  
18 background report, whichever comes first. The federal report now is coming very  
19 quickly, and in many cases coming before the state report. We have some suggested  
20 language that's in our written testimony, and we ask for your favorable consideration.  
21 Thank you.

22  
23 President Praisner,

24 Thank you. If you want to go, Ms. Arens?

25  
26 Ms. Arens,

27 Good afternoon, my name is Retha Arens, and I'm speaking on behalf of the Coalition  
28 for a Competitive Taxi Cab Industry. CCTI asks for your support in passing Expedited  
29 Bill 17-07. This Bill would extend the authority to issue the temporary driver ID's until  
30 December 1, 2008. Temporary IDs in conjunction with active recruiting by our member  
31 fleets have led to over 150 net new drivers serving the Montgomery County's  
32 passengers. This compares with an actual loss of drivers when the temporary IDs were  
33 not allowed. In order for a temporary -- a driver to receive a temporary ID they must  
34 pass a taxi cab driver test and an actual practice have passed the state criminal  
35 background check. And by the way, we have no objection to the department's proposal  
36 that if the FBI check comes back first that they can get the temporary ID if the state  
37 check is a little bit later; whichever comes back. But prior to the temporary ID bill being  
38 passed last fall, the federal checks were taking several months and the state checks  
39 were taking several weeks. And during this period we were unable to recruit any drivers.  
40 But since about mid April both checks have been coming back in about less than a  
41 week, but we do need to have this temporary ID bill in place in case there's some  
42 unforeseen technological or other issue or event that causes a significant slowdown  
43 where we could be back to the point of not being able to hire any new drivers. If we  
44 waited until there was a problem and we came before you, as you know, your schedule



July 24, 2007

1 would make it take several months; and we just can't afford that again. Our fleets track  
2 active drivers and as of July 2007, our member fleets needed about 119 drivers to be  
3 fully rented, which represents about 19% of the fleet. So we still have a driver shortage.  
4 And this shortfall is due to many causes. The first was the half-year loss in the  
5 temporary ID; the second is the very high turnover in the existing drivers. And this is  
6 caused by both the nature of the job and to a certain extent, the nature of the workforce.  
7 Approximately 100 drivers dropped off the department's list of valid drivers between  
8 November 2006 and July 2007, and there were a variety of causes for this. The actual  
9 turnover rate is even higher because drivers stay on the list even though they've left the  
10 industry. They stay on the list until their ID expires. And the final factor was the issuance  
11 of 70 new PVLs this spring, and the department has the authority to issue 65 more at  
12 some point in 2008, and we need to know we have sufficient drivers. The most  
13 important goal that Montgomery County and as members Floreen and Leventhal know,  
14 when we worked on Bill 14-04, is customer service. And without drivers we cannot  
15 serve our customer. Thank you.

16  
17 President Praisner,  
18 Thank you. Good timing. Councilmember Andrews.

19  
20 Councilmember Andrews,  
21 Thank you, Madam President. Well, certainly customer service is important in the taxi  
22 cab industry as it is in many others. One of the other interests that the County has of  
23 course is public safety, and making sure that drivers are not a threat to their passengers  
24 based on either a driving history or a criminal history. In the memo from Carolyn Biggins  
25 -- Ms. Biggins, you sent a memo to our staff where you indicated that there were a total  
26 of 11 drivers who between November 2006 and May 2007 had been disqualified; and  
27 four for poor driving records; and seven who had criminal records. And my question was  
28 were those -- into those instances of bad driving that led to disqualification or the  
29 criminal history occur after the person received their temporary license or their license  
30 to operate a taxi cab, or had those occurred before and had been missed by whoever  
31 was doing the background check. I understand there's a third-party vendor who was  
32 doing background checks for a while if not so -- I just want to understand though;  
33 whatever -- why -- when did those 11 instances occur in the process -- after the license  
34 was issued or before?

35  
36 Ms. Biggins,  
37 Well, we never did the third-party background checks. We have continued with the state  
38 and the federal checks. And that 11 include both the temporary IDs and the permanent  
39 IDs. So five of that 11 were the temporary IDs.

40  
41 Councilmember Andrews,  
42 Okay.

43  
44 President Praisner,



July 24, 2007

1 Council -- I'm sorry.

2  
3 Councilmember Andrews,  
4 But did they occur after the license -- the ID was issued or was it something that  
5 happened before and it wasn't picked up at the time?

6  
7 Ms. Biggins,  
8 I think we'll have to get back to you on that. Let me ask my staff to look into that, and  
9 then we'll bring it back to the T&E session on Thursday.

10  
11 Councilmember Andrews,  
12 Okay. Because I'm trying to understand the effectiveness of the background checks in  
13 identifying problems before the license is issued. Thank you.

14  
15 President Praisner,  
16 Councilmember Elrich.

17  
18 Councilmember Elrich,  
19 I just wanted to be clear about something that you said in terms of timing. If this -- looks  
20 like there is a 10-day period where a person waits anyway, if they don't provide a third-  
21 party check then they can get the temporary permit if nothing has come back in 10  
22 days, do I read this?

23  
24 Ms. Arens,  
25 The third-party language was put in there last fall when the checks were taking months  
26 or weeks for the state. In current practice once the legislation was passed, miraculously  
27 checks started coming back quicker. And to the best of my knowledge a third-party  
28 check has not been used to get any driver a temporary ID. So they get a temporary ID  
29 when the state check comes back. In actuality recently the FBI check is coming back  
30 faster, which is why the department is asking for an amendment or -- to their amended  
31 language. They can get a temporary ID whichever background check, federal or state,  
32 comes back first.

33  
34 Councilmember Elrich,  
35 I'm just looking at the legislation that says the applicants submit all information  
36 (inaudible) process at least 10 days previously. So that seems to me there is 10 days  
37 from when the information is submitted to when you might issue a temporary ID if no  
38 information has come back from the state or federal government.

39  
40 Ms. Arens,  
41 If no information has come back, then the current legislation allows for the companies to  
42 pay for a third-party check. It has never been used.

43  
44 Councilmember Elrich,



July 24, 2007

1 That is something I have a question about it's more -- .

2  
3 Ms. Arens

4 In 10 days why (inaudible).

5  
6 Councilmember Elrich,

7 Within the 10 days you're saying right now you're getting the information back from the  
8 feds or the state within that 10 days anyway.

9  
10 Ms. Arens,

11 Most of the time.

12  
13 Councilmember Elrich,

14 So you may not be issuing any temporaries as long as that continues.

15  
16 Ms. Arens,

17 That's been the practice recently.

18  
19 Councilmember Elrich,

20 Okay, so this is only if things get beyond the 10 days, and then you were going to issue  
21 the temporaries.

22  
23 Ms. Arens,

24 This is only if the checks slow down so that they can't issue -- if they don't come back,  
25 yes. It's a safety net.

26  
27 Councilmember Elrich,

28 Yes, okay.

29  
30 President Praisner,

31 Okay. Thank you all very much. Good afternoon, ladies and gentlemen, this is a public  
32 hearing on Expedited Bill 18-07, Tenant Displacement Sale of Mobile Home Park, Right  
33 of First Refusal, which would require the owner of a mobile home park to give the  
34 County, the Housing Opportunities Commission and a tenant organization an  
35 opportunity to buy the mobile home park before it is sold to another person, and  
36 generally amend the law relating to tenant displacement and the sale of rental housing.  
37 The record will close at the conclusion of the hearing. Action is tentatively scheduled for  
38 July 31, 2007. There are no speakers. Mike, I want to make sure that we have, as the  
39 packet indicates, contacted the specific mobile home park that exists, and the only  
40 mobile home park that exists within Montgomery County.

41  
42 Mr. Faden,

43 We'll double check that.



July 24, 2007

1 President Praisner,

2 Okay. The committee did deal with this yesterday with the assumption that we would --  
3 our recommendation might be modified based on what we hear today. But given no  
4 testimony, it's kind of hard to know if there are any concerns specific to the property  
5 owner who is affected by this legislation. I want to note for Councilmembers and for  
6 anyone in the public who may be listening and following along in the agenda, that  
7 Agenda Items number 8 and number 9 dealing with the special appropriation to Park  
8 and Planning Commission related to the SilverPlace Project have been cancelled  
9 because the request from Park and Planning Commission has been withdrawn. We will  
10 then move to item number 10. This is a public hearing on a special appropriation on the  
11 Department of Housing Community Affairs FY08 Operating Budget in the amount of  
12 \$250,000, for fire sprinklers for group homes. Action is scheduled for following the  
13 hearing. There are no speakers. I would turn to Mr. Andrews, Chair of the Public Safety  
14 Committee.

15  
16 Councilmember Andrews,

17 Thank you, Madam President. This is an issue that the Public Safety Committee has  
18 been working on over the past year. I want to thank my Chief of Staff Lisa Mandel-Trot  
19 for her excellent work on this issue throughout that time. The Public Safety Committee  
20 is unanimously recommending this special appropriation of \$250,000 to provide  
21 sprinklers for eligible group homes in our County that are serving some of our most  
22 vulnerable people, primarily the developmentally disabled adults. The breakout is on  
23 page three of the packet. There are about 285 group homes in the county -- or exactly --  
24 that have five or fewer beds that are in this group. And so far 42 have been found to be  
25 non-fire code compliant, which means they don't either have windows that meet code,  
26 they're too small, or they don't have sprinkler systems. So the Department of Fire and  
27 Rescue -- the Fire and Rescue Service, which is now responsible for conducting the  
28 inspections of these homes, has been following the code rigorously as they ought to,  
29 and has identified this as a significant issue. And a working group has been meeting  
30 over the past year of the different agencies, including Housing and Community Affairs  
31 and Health and Human Services as well to work out a proposed solution; and what they  
32 recommended was that the County, under certain circumstances, assist these group  
33 homes in getting these homes sprinklered since many of these group homes are not in  
34 a position to afford it themselves, either that or the installation of windows that are code  
35 compliant now. The preference and the recommendation is for sprinklering because that  
36 puts the fire out. And many of the people in these homes are not able to move quickly to  
37 evacuate on their own. The appropriation for \$250,000 is expected to provide a good  
38 amount of the money that would be needed to get these 42 homes that have been  
39 identified so far sprinklered. We would hope that this can be done very quickly within the  
40 next few months. If there are more funds that are needed, or more homes are identified,  
41 the department will come back to us. The Committee put several conditions on the  
42 funding it's recommending to the Council. 1, that it's limited to existing group homes that  
43 are not in compliance; 2, that existing group home that are serving predominately public  
44 clients; 3, that the homeowner must agree to use the home as a group homes for at



July 24, 2007

1 least three years. We listened to the -- we had the discussion the three years versus the  
2 five years, which was originally proposed, and Council President Praisner raised this  
3 issue at the introduction. And we were persuaded that had the three years made sense  
4 since it's consistent with the federal requirement on group home rehabilitation funds.  
5 And we were concerned that it might lead to the unintended consequence of a landlord  
6 being less likely to rent out the home for that purpose. Group homes don't tend to move  
7 much on their own; they tend to stay where they are. And so we felt the three years was  
8 the most reasonable amount to acquire that it be in existence to receive the full un-  
9 refunded public money. If the homeowner violates that three-year commitment then they  
10 would be responsible for paying the County a prorated amount. And we did not make  
11 this available to new group homes, or homes that are seeking to become licensed that  
12 should be fully aware of this and the rigorousness with which this is enforced in  
13 Montgomery County. We're going to come back to this issue in January to review how  
14 it's going and to consider again the requests about how we might assist new homes that  
15 want to locate -- that tend to locate in homes that are not complying because brand-new  
16 homes tend to be out of the price range of people looking to provide group homes. So  
17 the recommendation is to fund the \$250,000 to get us started on this important program  
18 to reduce the risk to some of our most vulnerable people in Montgomery County.

19  
20 President Praisner,

21 Okay, the Public Safety Committee's recommendation is before us; all in favor?  
22 Unanimous among those present. Councilmember -- Vice President Knapp has asked  
23 for a point of personal privilege before we adjourn.

24  
25 Vice President Knapp,

26 Thank you, Madam President. I just want to alert my colleagues of the fact there was an  
27 article in the Washington Post on Saturday referencing the drought conditions that we're  
28 seeing throughout the region and the impact on the agriculture community. And what  
29 I've asked is to have Justina Ferber draft up a resolution for the Council for introduction  
30 next week, which is similar to what the Council did 1997 and 1999 when drought  
31 conditions were existent then as well. I talked to a number of farmers over the weekend  
32 and it's a little too early to tell whether or not it will actually impact the harvest, but I  
33 wanted to get something introduced so that the clock could begin to run so when we  
34 come back in September after our August recess that we're in a position to act if the  
35 conditions so warrant. I understand from the Council President that the County  
36 Executive is also considering sending over similar legislation, so I just wanted to put that  
37 out there for people to be aware. And if you're interested let me know.

38  
39 President Praisner,

40 Yeah, Linda Lauer had just informed me that we would have a new item coming from  
41 the Executive on this issue, so we'll look at them both. Okay, we are adjourned, thank  
42 you.